

FILE COPY

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION FOR	:	
AN ADMINISTRATIVE INJUNCTION	:	
INVOLVING	:	FINAL DECISION
	:	AND ORDER
TAI TRAN,	:	LS97121711RAL
RESPONDENT.	:	


The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 27th day of January 1998.


Marlene A. Cummings, Secretary
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION
FOR AN ADMINISTRATIVE INJUNCTION
INVOLVING
TAI TRAN,
RESPONDENT

**PROPOSED DECISION
AND ORDER**
Case No. LS-97121711-RAL

Based on the authority in section 440.12(2) of the Wisconsin Statutes and chapter RL 3 of the Wisconsin Administrative Code, and the Findings of Fact and Conclusions of Law below,

**THE DEPARTMENT OF REGULATION AND LICENSING
HEREBY ISSUES THE FOLLOWING SPECIAL ORDER:**

Effective on the date on which this order is signed by the departmental secretary or her designee,

- the respondent, Tai Tran, is **ENJOINED AND PROHIBITED** from continuing to engage, directly or indirectly, in manicuring, which is conduct which requires a credential under chapter 454, Stats., unless and until he obtains the appropriate credential under chapter 454, Stats.

**ANY VIOLATION OF THIS SPECIAL ORDER MAY RESULT
IN A FORFEITURE OF UP TO \$10,000 FOR EACH OFFENSE,
WITH EACH DAY OF CONTINUED VIOLATION
CONSTITUTING A SEPARATE OFFENSE.**

PARTIES

The parties to this action under section 227.44 of the Wisconsin Statutes and chapter RL 3 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats., are:

Complainant: Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53703

Respondent: Tai Tran
c/o Magical Nails
6414 North 76th St.
Milwaukee, WI 53223

Regulatory Authority: Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. On December 17, 1997, the complainant, the Division of Enforcement in the Department of Regulation and Licensing, filed a petition for an administrative injunction. A hearing on the petition was scheduled for January 12, 1998. On December 12, 1997, a copy of the petition and a notice of hearing were personally served on the respondent.

B. The notice of hearing informed Tai Tran that he was to file a written answer to the petition within 20 days after service. The respondent did not file an answer to the petition within the specified time limit.

C. The hearing was held as scheduled. The respondent did not appear. The department was represented by Attorney Steven Gloe of the Department's Division of Enforcement. Upon the respondent's non-appearance, attorney Gloe moved for a finding of default under sec. RL 3.13, Wis. Admin. Code, and the motion was granted. The petition forms the basis for this Proposed Decision.

FINDINGS OF FACT

1. The petition in this action was personally served upon the respondent, Tai Tran, and he failed to comply with the requirement to file an answer.

2. The respondent, Tai Tran, does not hold a license to practice as a manicurist in the State of Wisconsin.

3. On December 12, 1997, Tai Tran engaged in the practice of manicuring at Magical Nails in Milwaukee, Wisconsin.

CONCLUSIONS OF LAW

I. Under section 440.21, Stats., and chapter RL 3, Wis. Admin. Code, the Department of Regulation and Licensing is the legal authority responsible for enforcing laws requiring credentials issued under chapters 440 to 459, Stats. The department has jurisdiction over the subject-matter of a petition alleging that a person engaged in the practice of manicuring without a credential required under chapters 440 through 459.

II. The respondent, Tai Tran, received notice of this action while he was physically present in the State of Wisconsin. The Department of Regulation and Licensing has personal jurisdiction over the respondent under section 801.04(2), Stats.

III. The respondent, Tai Tran, is in default under section RL 3.13, Wis. Admin. Code. The department may make findings of fact and enter an order on the basis of the petition and the evidence presented at the hearing.

IV. The respondent, Tai Tran, has engaged in the practice of manicuring, in violation of section 454.04(1) of the Wisconsin Statutes. A special order enjoining Tai Tran from continuing to practice manicuring is therefore appropriate under section 440.21(2), Stats.

OPINION

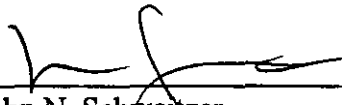
This case is an action for an administrative injunction against Tai Tran, under the authority of sec. 440.21, Stats., and ch. RL 3, Wis. Admin. Code. The petition in this matter alleged that Tai Tran engaged in activities which are reserved by statute to those holding a valid manicurist license, under sec. 454.04(1), Stats.

Tai Tran is in default, not having answered the petition as required by administrative rule, and not having appeared at the scheduled hearing. By his default, Tai Tran has effectively admitted all the allegations of the petition. There is no need in this opinion to weigh or discuss evidence, and no issues of fact remain.

The undisputed allegations in the complaint establish clearly that Tai Tran engaged in the practice of manicuring without the professional credential required by statute. An administrative injunction is authorized by section 440.21(2), Stats., and chapter RL 3, Wis. Admin. Code, and it is clearly appropriate here.

Any person who violates a special order issued under section 440.21(2), Stats., may be required to forfeit up to \$10,000 for each offense, under section 440.21(4), Stats., and each day of continued violation constitutes a separate offense. It should be noted that the issuance of a special order in an administrative injunction does not preclude other remedies for the respondent's violations of statutes, such as a misdemeanor prosecution by the district attorney under section 457.17, Stats.

Dated and signed: January 12, 1998



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

In the Matter of a Petition for an Administrative Injunction Involving

Tai Tran,

AFFIDAVIT OF MAILING


Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On January 30, 1998, I served the Final Decision and Order dated January 27, 1998, and Application Information, LS97121711RAL, upon the Respondent Tai Tran by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 158 773.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:


Tai Tran
c/o Magical Nails
6414 N. 76th Street
Milwaukee WI 53223



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 30th day of January, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: TAI TRAN

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 1/30/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935